



# SECURITY COUNCIL REPORT UPDATE REPORT



23 September 2011 No. 2

## PALESTINE'S APPLICATION FOR ADMISSION TO THE UN

### EXPECTED COUNCIL ACTION

On Monday, 26 September, it is expected that the Council will meet in consultations at 3pm on the issue of Palestine's application for UN membership. However, at time of writing it remained unclear if or when the Security Council might vote on such an application.

### KEY RECENT DEVELOPMENTS

Palestinian President Mahmoud Abbas formally submitted Palestine's application for UN membership to the Secretary-General today (Friday, 23 September) before his address to the General Assembly. Ambassador Nawaf Salam of Lebanon, president of the Security Council in September, confirmed receipt of this application from the Secretary-General and reported that he had circulated the application to all Council members.

Also on 23 September, the Quartet—comprised of the EU, Russia, UN and the US—issued a statement noting Palestine's application and setting out a timeframe for both the Israelis and Palestinians to resume direct negotiations to reach an agreement by the end of 2012.

The recent round of diplomatic activity by the Quartet began on Sunday, 18 September, as an attempt to find a formula for parameters satisfactory to both parties in order to resume direct negotiations and defuse tensions over the Palestinian membership bid. Today's statement covered a specific

timeframe but did not address any parameters for resuming negotiations. It seems many of the concerns from the 11 July Quartet meeting in Washington DC still have not been sufficiently addressed. (The US draft from the July meeting referring to 1967 borders as the basis for negotiations was apparently weakened by omitting the notion of agreed land swaps and by the very broad reference to new demographic realities, i.e. settlements. Other aspects seem to have been contentious as well.)

US President Barack Obama met separately with both Israeli Prime Minister Benjamin Netanyahu and Abbas on Wednesday, 21 September, following his General Assembly address in which he reiterated the commitment to a two-state solution through direct negotiations and discouraged the Palestinian initiative for UN membership.

On 21 September, French President Nicolas Sarkozy also addressed the General Assembly recognising that Palestine cannot immediately achieve full membership via the Security Council and advocating for a non-member state observer status by the General Assembly as a productive intermediary step. Sarkozy also noted that a veto at the Security Council could be a problematic signal to send to the region given the current political upheavals.

Robert Serry, the UN Special Coordinator for the Middle East

Peace Process, prepared a report for the 18 September Ad-Hoc Liaison Committee meeting in New York. The report reiterated Serry's message from his 26 July briefing to the Security Council—that there was a dramatic gap between the maturation of Palestinian state-building and the failure of the peace process to deliver on the political track.

On 16 September Abbas made a speech to the Palestinian people outlining his approach to the UN to apply for membership.

On 12 September an Arab League committee met in Cairo to discuss the possible membership bid. The outcome of the meeting appeared to be broad enough to cover both a formal application for full UN membership—which would require a Security Council resolution—or an alternate strategy in the General Assembly—perhaps a General Assembly resolution to elevate Palestine's status to that of a non-member observer state—or conceivably even both, i.e. apply for formal membership first in the Security Council and if that fails pursue the General Assembly strategy. However, unlike the Doha meeting of this committee in July, it seemed there was a stronger sense that the Palestinians would pursue the Security Council option first.

### KEY ISSUES

The key issue is how the Council will treat the application by Palestine for admission to the UN.

A related issue is the application's possible impact on the peace process and the signals any subsequent Council action might send to the region given the current political upheavals.

In the context of Palestine's application for full UN membership, the following background is relevant.

#### **DECLARATION OF A STATE OF PALESTINE**

On 15 November 1988, Palestine unilaterally declared its independence. The declaration and accompanying political communiqué addressed the territorial dimension of Palestine indirectly. It inferred recognition of Israel and limited Palestinian territorial scope by affirming the terms of Security Council resolutions 242 of 1967 and 338 of 1973.

Palestinian recognition of the state of Israel was formalised in an exchange of letters between Palestine Liberation Organisation (PLO) head Yasser Arafat and Israeli Prime Minister Yitzhak Rabin in the lead-up to the signing of the Oslo Accords on 13 September 1993, thereby giving greater specificity to the territorial scope of Palestine, with the Oslo peace process meant to agree on exact boundaries.

#### **CURRENT STATUS OF PALESTINE IN THE UN**

In 1974 the General Assembly, in resolution 3237(XXIX), approved the PLO (then seen as a national liberation movement) as an observer.

In December 1988, shortly after the proclamation of the state of Palestine, the General Assembly, in resolution 43/177, acknowledged "the proclamation of the State of Palestine" and decided "that the designation 'Palestine'" should be used in place of the PLO without prejudice to the observer status and functions of the PLO "in conformity with relevant UN resolutions and practice". The resolution came close to an acknowledgement that

Palestine was a state, but stopped short of that and in effect maintained Palestine in the non-state observer category.

In July 1998, the General Assembly, in resolution 52/250, enhanced the participation privileges of Palestine in the UN system by defining better treatment for Palestine in terms of making proposals and seating. But again this resolution contained language which made it clear that Palestine was still being accorded a lesser status than a state. In effect the resolution elevated Palestine to a new *sui generis* observer status, still less than a state but higher than all other observers.

The General Assembly could change the status of Palestine at the UN from its current *sui generis* observer status to that of a non-member state observer.

#### **ADMISSION OF A UN MEMBER: CHARTER AND RULES OF PROCEDURE**

Applications to be admitted to the UN are submitted to the Secretary-General. The application must include a formal instrument as a declaration accepting the obligations in the Charter. The Secretary-General is required to "immediately place the application" before the Security Council (rule 59 of the Provisional Rules of Procedure of the Security Council) and to send a copy of the application to the General Assembly "for information" (rule 135 of the Rules of Procedure of the General Assembly).

Article 4 of the UN Charter is clear that only "states" may apply to be admitted to the UN. An application for admission therefore has to be from an entity which meets the criteria for statehood, including a defined territory and a recognised government. Past precedents confirm, however, that this does not rule out applicants in situations where there remain significant disputes about the territorial boundaries. Past precedents also confirm that applicants do not have to achieve universal recognition before they can be

admitted. In 1950 Secretary-General Trygve Lei wrote a memo (S/1466) advising the Security Council that in effect admission to the UN could not be conditioned on recognition of the applicant by all member states.

Article 4 also requires that applicants be "peace-loving", that they accept the obligations contained in the Charter and that, in the judgement of the organisation, they are "able and willing" to carry out the obligations. The decision on admission to the UN is for the General Assembly to make. But article 4(2) requires that this be "upon the recommendation of the Security Council." Past practice has shown numerous cases where applicants have not been able to achieve admission because of division between permanent members of the Security Council and the veto of draft resolutions recommending admission.

As indicated above, the application for admission must first be considered by the Security Council. Under rule 59 of the Provisional Rules of Procedure of the Security Council there is a standing Council Committee on Admission of New Members (comprised of all 15 members) which reports its conclusions to the Council. The Council then, by resolution, takes a decision to make a recommendation to the General Assembly. This decision is subject to the veto. Under rule 60, if there is no recommendation for admission, the Council must submit a "special report" to the General Assembly.

In the General Assembly, under rule 83 of its Rules of Procedure, the admission of a new member is an "important question" which requires a two-thirds majority. Rule 137 allows the General Assembly, if the Security Council fails to recommend admission or postpones consideration, to refer the application back to the Council "for further consideration and recommendation or report".

#### **ADMISSION OF A NEW MEMBER: PROCESS AND PRACTICE**

Once a state submits an application the Secretary-General is expected to immediately send a copy of the application to the General Assembly and to the Council. However, in the past the Secretary-General has delayed transmission as in the case of the applications of the Democratic Republic of Viet Nam (1948) and the Democratic People's Republic of Korea (1949). In both cases, the Secretariat circulated the applications "for the convenience of the Security Council" but "not in the application of rule 6 of the provisional rules of procedure of the members of the Security Council" (which requires the Secretary-General to immediately bring to the attention of the Council communications on any matter for the consideration of the Security Council). This prompted the USSR to allege that the Secretariat had not complied with its duties under Chapter 4 of the Charter. More recently, in the case of the former Yugoslav Republic of Macedonia in 1993, the Secretary-General only circulated the application after requesting the President of the Council to hold informal consultations on the "receivability" of the application (S/25147).

Following referral from the Secretary-General, the Council will consider the application at a formal closed meeting and adopt an agenda item usually entitled "Admission of New Members". At this session the Council could agree that the application should be referred by the President of the Council to the standing Committee on Admission of New Members. However, over the years, applications for membership have also been referred to the Committee by the President without discussion or a decision of the Council.

The Council could also choose not to refer the application to the Committee as rule 59 states that "unless the Security Council decides otherwise, the application shall be referred by the President [of the Council] to a committee." Over the years the practice of referring membership applications has varied. The first countries whose applications for membership were not

sent to the Committee and received a direct recommendation from the Council were Pakistan (1947), Finland (1947) and Indonesia (1950). Between 1952 and 1968 the Council did not refer any applications to the Committee. However, since 1969, applications generally have been referred to the Committee.

Under Rule 59 of the Provisional Rules of Procedure of the Security Council the Committee is expected to examine the application and report its conclusions to the Council not less than 35 days before a regular session of the General Assembly or not less than 14 days before a Special Session. Under Rule 60, the Council should then report to the General Assembly not less than 25 days or 4 days respectively. Although it appears that the time limits in Rules 59 and 60 are intended to give the General Assembly sufficient time to consider the Council's recommendation, in effect they do not require the Committee or the Council to make a decision within a certain time frame. In addition, the last paragraph of Rule 60 allows the Council to waive the time limits under "special circumstances".

This occurred most recently in 2000 when the Council waived the time limit for Tuvalu and the former Yugoslavia so that their applications could be considered by the General Assembly's 55th session. In the case of Yugoslavia the Committee recommended the Council use the "special circumstances" clause to waive the time limits and allow for an earlier submission to the General Assembly. The application was referred to the Committee on 31 October and the General Assembly admitted Yugoslavia on 1 November. In the case of Namibia, the Council adopted a proposal (S/PV.2917) to waive the time limit on the 6 April 1990 application as the General Assembly was going to be meeting on 23 April.

As with most Council subsidiary bodies, the Committee generally takes decisions by consensus, i.e. agreement among all 15 members, although there have been instances

in which it has done so by simple majority. In effect this means each member has an "informal" and "hidden" veto. (Committee meetings are not public.) If there is disagreement in the Committee on whether or not to recommend Palestine for UN membership it is possible that its application could remain in the Committee.

If the Committee recommends admission it usually presents the Council with a draft resolution recommending admission of the new member for consideration by the General Assembly. In recent years, if there is no disagreement over the Committee's recommendation, the Council has chosen to adopt this resolution "in accordance with the understanding reached in prior consultations" and without either a debate or a vote.

If there is a lack of consensus on whether to refer the application to the Committee or debate it within the Council, the President of the Council could propose to put the referral of the matter to the Committee on the agenda of the Council and call for a vote. This would be a procedural vote requiring nine votes and no vetoes would be applicable. If the proposal is not adopted the application would then be dealt with by the Council.

Generally the Council would then have to vote on a resolution on admitting the country that has applied for UN membership. As membership is a substantive issue, at least nine of the fifteen members of the Council, with no permanent members casting a veto, must agree to the admission of the new state. Past practice has shown numerous cases where applicants have not been able to achieve admission because of division between permanent members of the Security Council and the veto of draft resolutions recommending admission.

The P5 have used their veto against admission of new members 59 times. The USSR vetoed 51 applications between 1946 and 1961 while the US vetoed 6 between 1975 and 1976. China has used its veto twice, blocking the

admission of Mongolia (1955) and Bangladesh (1972). In 1961, when Mongolia was finally recommended for admission after reconsideration, China did not participate in the vote. In two more recent occasions (Nauru 1999 and Tuvalu 2000), China disassociated itself from the Committee report recommending admission and then abstained on the Council resolutions enabling their admission to the UN.

The last time the Council rejected a membership application due to a veto by a permanent member was on 15 November 1976 when the US vetoed the application of the newly established Socialist Republic of Viet Nam. Following the 1976 veto, the General Assembly expressed "deep regret and concern" that "one negative vote by a permanent member of the Security Council prevented the adoption of the draft resolution supported by 14 members" and asked the Council to reconsider the matter favourably in strict accordance with Article 4 of the Charter.

However there have been exceptions to the Council adopting a resolution to recommend admission of a new member. In the case of Kuwait (1963) the Council did not adopt a resolution but instead unanimously agreed in its 1034th meeting that it should become a member. The Council president then declared that the statements made warranted the conclusion that the Council had recommended the admission of Kuwait and notified the Secretary-General.

In a rather unusual case related to the admission of Burundi and Rwanda, the General Assembly acted before the Council, recommending that both states be granted UN membership after their proclamation of independence. Following their independence on 1 July 1962, the Council complied with the recommendation contained in General Assembly resolution 1746 (XVI). Moreover, Rwanda actually filed its application for membership 4 days before independence (S/5137).

If the Council recommends

admission, the recommendation is presented to the General Assembly for consideration. A two-thirds majority is needed in the General Assembly for admission of a new member, and membership is effective on the date that the enabling resolution is adopted.

In recent years the practice has been for the Council to complete its consideration of membership applications rather quickly. For instance, in the most recent case of South Sudan, the entire process took three days (11-13 July 2011). The first meeting of the Council to consider the application, the Committee meeting and the second open meeting of the Council to adopt its recommendation took two days. The General Assembly then approved the membership application the following day.

However, in the past there have been examples of this process taking many years. It took the Republic of Korea and the Democratic People's Republic of Korea 42 years to become members (1949-1991). Most of the first applicants for UN membership were also placed on hold, only getting through the Council following a grand bargain reached on 14 December 1955 that paved the way for 16 states.

Historically there has also been a time lag between the Secretary-General's submission of the application and the Council's consideration. In the case of Kuwait in 1963 the Council took five and half months before it took it up for consideration.

If the Council decides not to recommend the new state for admission or postpones consideration of the application, under Rule 60 of its Rules of Procedure it has to submit a special report to the General Assembly. Having studied the special report, the General Assembly can then send the application back to the Council with a full record of its discussion for further consideration and recommendation. In the case of Israel (1949), its Representative at the UN actually made a direct request (S/1267) to the Council to reconsider its application

after it had failed to obtain the required number of votes from the Council on 17 December 1948.

The General Assembly is also able to recommend that permanent members of the Council consult to reach agreement as was the case in 1947 with the applications of Albania, Bulgaria, Hungary, Romania and Mongolia (resolution 113(II)A).

The Council, however, can choose to postpone indefinitely the reconsideration of an application when it comes back from the General Assembly as was the case with 14 states between 1947 and 1950. In a number of cases the decision to postpone reconsideration of an application indefinitely was done in order to allow consultations among the permanent members.

## **OPTIONS**

The Council has the following options:

- referral by the President to the Committee without a decision of the Council;
- referral to the Committee by a decision of the Council;
- decide not to refer the application to the Committee and debate and vote on the application in a Council meeting; or
- take no immediate action

## **COUNCIL DYNAMICS**

It is widely thought among Council members that the US would veto any Palestinian application for full UN membership. President Obama's address to the General Assembly underscored that position. However, the US may not be the only Council member that could find the application premature, as none of the EU Council members (France, Germany, Portugal and the UK) have explicitly signaled support for full UN membership. Such support might be unlikely given that none of the four EU countries have bilaterally recognised Palestine.

Colombia highlighted that a negotiated settlement is the only way forward in its 21 September General

## Assembly address.

Palestine is currently recognised by 128 states, nine of which are Security Council members (Bosnia and Herzegovina, Brazil, China, Gabon, India, Lebanon, Nigeria, Russia and South Africa). It is unclear if Bosnia and Herzegovina and Nigeria are prepared to support Palestine's membership bid in the Security Council.

The Palestinians have said that they do not view their bid for UN membership as contradictory with either the peace process or the parallel track of going to the General Assembly to seek non-member state observer status (which can be granted by a simple majority of the General Assembly).

## UN DOCUMENTS

### SECURITY COUNCIL RESOLUTIONS

- S/RES/1999 (13 July 2011) recommended South Sudan for UN membership.
- S/RES/702 (8 August 1991) recommended the Republic of Korea and the Democratic People's Republic of Korea for UN membership.
- S/RES/338 (22 October 1973) called for a ceasefire and the comprehensive implementation of resolution 242.
- S/RES/242 (22 November 1967) was a British sponsored compromise between the three-power and US drafts, calling on all parties to end territorial claims, respect sovereignty, and for Israel to withdraw from occupied territories.
- S/RES/109 (14 December 1955) recommended Albania, Jordan, Ireland, Portugal, Hungary, Italy, Austria, Romania, Bulgaria, Finland, Sri Lanka (Ceylon), Nepal, Libyan Arab Jamahiriya (Libya), Cambodia, Lao People's Democratic Republic (Laos) and Spain for UN membership.

### GENERAL ASSEMBLY RESOLUTIONS

- A/RES/65/308 (14 July 2011) admitted South Sudan as a member of the UN.
- A/RES/55/12 (1 November 2000) admitted the Federal Republic of Yugoslavia as a member of the UN.
- A/RES/52/250 (7 July 1998) elevated Palestine to a new sui generis observer status.
- A/RES/46/1 (17 September 1991) admitted the Republic of Korea and the Democratic People's Republic of Korea as members of the UN.
- A/RES/43/177 (15 December 1988) decided that the designation 'Palestine' should be used in place of the designation 'Palestine Liberation Organization'.
- A/RES/31/21 (26 November 1976) was the General Assembly request for reconsideration of the application of Viet Nam by the Security Council.
- A/RES/3237 (XXIX) (22 November 1974) was the General Assembly approval of the PLO as an observer.
- A/RES/1746 (XVI) (27 June 1962) recommended the admission of Rwanda and Burundi after the proclamation of independence on 1 July 1962.
- A/RES/995 (X) (14 December 1955) admitted Albania, Jordan, Ireland, Portugal, Hungary, Italy, Austria, Romania, Bulgaria, Finland, Sri Lanka (Ceylon), Nepal, Libyan Arab Jamahiriya (Libya), Cambodia, Lao People's Democratic Republic (Laos) and Spain as members of the UN.
- A/RES/113 A (II) (17 November 1947) recommended that permanent members of the Security Council consult to reach agreement on the applications of Albania, Bulgaria, Hungary, Romania and Mongolia.

### MEETING RECORDS

- S/PV.4215 (31 October 2000) was on the application of Yugoslavia.
- S/PV.4103 (17 February 2000) was on application of Tuvalu.
- S/PV.2917 (17 October 1990) was on the application of Namibia.
- S/PV.1972 (15 November 1976) was on the application of the Socialist Republic of Viet Nam.
- S/PV.1034 (7 May 1963) was on the admission of Kuwait as a member of the UN.
- S/PV.503 (26 September 1950) was on the application of Indonesia.
- S/PV.386 (17 December 1948) was on Israel membership.
- S/PV.206 (1 October 1947) was on the application of Finland.
- S/PV.186 (18 August 1947) was on the application of Pakistan.

### OTHER

- S/2011/420 (11 July 2011) was the report of the Committee on the Admission of New Members concerning the application of South Sudan for admission to membership in the UN.
- S/2011/418 (9 July 2011) was the application for membership of South Sudan.
- S/2000/1051 (31 October 2000) was the report of the Committee on the admission of new members concerning the application of Yugoslavia.
- S/2000/1043 (27 October 2000) was the application for membership of the Federal Republic of Yugoslavia.
- S/2000/70 (31 January 2000) was the report of the Committee on the admission of new members concerning the application of Tuvalu.
- S/25147 (22 January 1993) was a note from the Secretary General circulating the application of Macedonia.
- S/5137 (27 June 1962) was the application for

membership of Rwanda.

- S/1267 (12 February 1949) was the application for membership of Israel.
- S/1247 (10 February 1949) was a note from the Secretary General circulating the application of DPRK.
- S/1238 (19 January 1949) was the application for membership of the Republic of Korea.
- S/2780 (22 November 1948) was a note from the Secretary General circulating the application of Viet Nam.

#### **ADDITIONAL USEFUL SOURCES**

- Provisional Rules of Procedure of the Security Council
- Rules of Procedure of the General Assembly
- UN Charter

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**Security Council Report is supported by the Governments of Australia, Belgium, Canada, Denmark, Finland, Germany, Liechtenstein, Luxembourg, Norway, Singapore and Switzerland, the John D. and Catherine T. MacArthur Foundation and the William and Flora Hewlett Foundation. It is incorporated as a not for profit Organisation and operates in affiliation with the School of International and Public Affairs at Columbia University in New York.**

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